

P. Ahearn



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Dresser-Rand Company--Reconsideration

**File:** B-237342.3

**Date:** December 10, 1990

Robert E. Little, Jr., Esq., Porter, Wright, Morris & Arthur, for the protester. M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

### DIGEST

Where agency based award on a motor it believed was superior to the one offered by the awardee in its proposal, but subsequently determined that only the originally proposed motor would meet its needs, agency properly modified awardee's contract to require the originally proposed motor; modification was within scope of contract since (1) price was not changed, (2) same motor, with alterations, would be furnished, and (3) agency is requiring an item that satisfies precisely the solicitation requirements on which the original competition was based.

### DECISION

Dresser-Rand Company requests reconsideration of our decision, The Department of the Navy--Recon., B-237342.2, July 17, 1990, 90-2 CPD ¶ 39, in which we reversed our original decision, Dresser-Rand Co., B-237342, Feb. 12, 1990, 90-1 CPD ¶ 179, where we sustained Dresser-Rand's protest of the award of a contract to Rix Industries under Navy's request for proposals (RFP) No. N00228-89-R-2223, for compressor units.

To recount the relevant facts briefly, we determined in our original February 12 decision that the Navy proposed to allow Rix to substitute a compliant 10 horsepower (HP) motor for the 15 HP motor it had offered in its proposal, which the Navy determined after award to be noncompliant. We held that allowing the awardee to make its proposal acceptable after award in this fashion, without giving other offerors the same opportunity to improve their proposals, would be improper, and thus sustained the protest.

In our subsequent July 17 reconsideration decision, we reversed our prior holding on the basis that the facts were

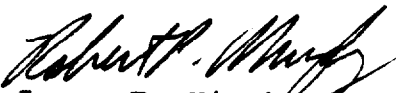
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different than we initially had found. We determined that Rix's proposal actually had been for a compliant 10 HP motor, but that at the time of award Rix offered, and the Navy accepted, a 15 HP motor believing it to be a permissible late offer from the successful offeror on terms more favorable to the government. The Navy subsequently determined that the 15 HP motor was not acceptable, and asked Rix to provide the 10 HP motor it initially had proposed. Since it now was clear that Rix had submitted an acceptable proposal during the competition, we held that now accepting that proposal was unobjectionable.

Dresser-Rand argues in its reconsideration request that, even if Rix's original proposal of a 10 HP motor was acceptable, it nevertheless was improper for the Navy to accept that proposal after rejecting its 15 HP motor, since the offer of a 15 HP motor at the time of award had superseded, and thus rendered void, Rix's original proposal.

We disagree. Even if Dresser-Rand is correct that Rix's original offer no longer could be accepted, we view the Navy's actions here as essentially modifying Rix's contract to require Rix to provide the acceptable 10 HP motor at the same contract price. Such modifications constitute contract administration matters, which we will review only to determine whether the modification is beyond the scope of the original contract. 4 C.F.R. § 21.3(m)(1) (1990); see Neal R. Gross & Co., 69 Comp. Gen. 292 (1990), 90-1 CPD ¶ 212. The modification here clearly is within the scope of Rix's original contract. The contract price will remain the same and, likewise, the motor involved will not be changed but, rather, merely will be adjusted to operate at 10 HP instead of 15 HP. Further, this modification clearly is not of a nature that might have changed the outcome of the original competition; the Navy is accepting an item that satisfies precisely the solicitation requirements on which the competition was based.

The request for reconsideration is denied.

  
for James F. Hinchman  
General Counsel